IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Second Appeal No.89 of 2005

Shri Bhupal Jakanna Chinchawade .. Appellant.
V/s.
Chelnabi Bhupal Chinchawade .. Respondent.

Shri J.A. Sarkhot i/b. Shri R.V. Govilkar
for Appellant.

Shri Pratap Patil for Respondent.

CORAM: ABHAY S.OKA J.
28th April, 2005

P.C.

1. Heard the Advocates appearing for the parties. The Advocate appearing for the appellant submits that ground "L" of the memorandum of appeal raises substantial question of law. Considering the facts and circumstances of the case appeal is taken up for hearing forthwith on the said substantial question of law.

2. The Appellant is the husband and Respondent is the wife. In the year 1961, the marriage between the Appellant and Respondent was dissolved by a decree of divorce. The Respondent wife applied under Section 25 of the Hindu Marriage Act, 1955 on 1st January, 1997 for grant of permanent alimony. The decree was passed by the Trial Court granting maintenance at the rate of Rs.1,600/- p.m. from 6th January, 1994. The charge for the maintenance amount was ordered to be kept on the properties

held by the Appellant. The decree passed by the Trial Court has been confirmed by the Appellate Court.

3. The learned counsel appearing for the Appellant submitted that the Appellant is 82 years old and is surviving only on pension. She submitted that decree for maintenance has been passed 40 years after the marriage was dissolved by a decree of divorce. She submitted that the Appellant has remarried and at such advanced age he is unable to pay Rs.1,600/- p.m. from 6th January, 1994. She submitted that maintenance was granted for the first time by the impugned judgement of the Trial Court and therefore maintenance could not have been granted for a period of 3 years prior to the date of the institution of the proceedings. She submitted that the said issue is not considered by the Courts below.

4. The learned counsel appearing for the Respondent submitted that the concurrent findings are recorded by both the Courts below. He submitted no interference is permissible under section 100 of Code of Civil Procedures, 1908. The learned counsel fairly stated that the maintenance amount can be fixed at the rate of Rs.1,500 p.m.

5. I have considered the rival submissions. Under

section 25 of the Hindu Marriage Act, 1955, the Respondent has a right to pray for the decree of maintenance after marriage between the parties was dissolved by a decree of divorce. The right to claim maintenance accrued to the Respondent wife in 1961, when the decree of divorce was passed and that is the reason why the Trial Court directed the Appellant to pay maintenance from 6th January, 1994 i.e. for a period of 3 years prior to the date of institution of the proceedings. I find no error in granting maintenance from 6th January, 1994.

6. The Courts below have held that apart from pension amount which the Appellant is receiving, he has an agricultural land and he is getting some income from the agricultural land and he is receiving pension amount of Rs.2,600/- p.m. The Appellant was gainfully employed. Apart from receiving the pension amount, the Appellant is holding agricultural land and he is receiving some income. On the agricultural land he is taking crop of sugarcane. Considering all the aspects the Courts below held that the Appellant has to pay the maintenance at the rate of Rs.1,600/- p.m. to the Respondent. As stated earlier, the learned counsel appearing for the Respondent has fairly stated that the maintenance can be fixed at the rate of Rs.1,500/- p.m.

7. The decree of divorce was passed in 1961. When the proceeding for maintenance was filed by the Respondent, the Appellant was about 70 years old. The proceeding filed in the year 1997 is decided in the year 2002. Considering the age of the Appellant it will be unjust to direct the Appellant to pay the maintenance at the rate of Rs.1,500/- p.m. from 6th January, 1994. Today the age of the Appellant is stated to be 82 years. It is stated that as per the directions given by this Court, the Appellant has deposited Rs.25,000/- in the Trial Court. Considering all these facts, maintenance amount directed to be paid by the Trial Court from 6th January, 1994 till 31st December, 1996, is fixed at the rate of Rs.800 p.m.

8. Hence, I pass the following order:-

1. The impugned judgement and decree dated 8th October, 2002 is passed by the Trial Court is modified. The operative part of the order passed by the Trial Court will now read thus:-

"a. The Application for maintenance is partly allowed with proportionate costs.

b. The Opponent husband do pay to the Applicant wife the maintenance at the rate

of Rs.1,500/- p.m. from 1st January, 1997 during the life time of the Applicant as per Section 25 of the Hindu Marriage Act, 1955.

c. The Opponent shall pay to the Applicant the maintenance amount at the rate of Rs.800 p.m. from 6th January, 1994 to 31st December, 1996.

d. A charge for the maintenance amount is kept on the properties of the Opponent's share only if the said properties are in his name in 7x12 extracts at Exhibit 6.7 bearing gat nos.1718 and 1092 of Bhilwadi."

2. The Appellant is granted time of 6 months to pay arrears of maintenance as of today. The Appellants will be entitled to adjustment of a sum of Rs.25,000/- deposited by the Appellant as per the directions given by this Court.

3. There will be no order as to costs.

4. In view of the above order no separate order is necessary in Civil Application No. 153 of 2005 and the same is disposed of.